

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EUGENE WRIGHT,

Plaintiff,

v.

ORDER
10-CV-31S

SHERYL STEWART,

Defendant.

Plaintiff has moved to have counsel appointed to represent him in this civil matter. (Docket No. 27.) For the reasons stated below, the motion is denied without prejudice.

The factors to be considered in ruling on a motion for the appointment of counsel include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." Cooper v. A. Sargent Co., 877 F.2d 170, 172 (2d Cir. 1989).

The court must consider the issue of appointment of counsel carefully, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." Cooper, 877 F.2d at 172. Therefore, the court must first look to the "likelihood of merit" of the underlying dispute, Cooper, 877 F.2d at 174, and "even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the . . . claim are thin and his chances of prevailing are therefore poor." Carmona v. United States Bureau of Prisons 243 F.3d 629, 632 (2d Cir. 2001) (denying counsel on appeal where petitioner's appeal was not frivolous but nevertheless appeared to have little merit).

Plaintiff seeks appointment of counsel on the basis that he cannot afford to retain an attorney and cannot represent himself due to lack of formal education. This alone is an inadequate showing that the appointment of counsel is warranted. Moreover, Plaintiff's case appears to have significant weaknesses, as highlighted in Defendant's Motion to Dismiss, or, in the alternative, for Summary Judgment (Docket No. 22), which Plaintiff failed to meaningfully respond to, despite being ordered to do so. Accordingly, Plaintiff's request for the appointment of counsel is denied at this time.

IT HEREBY IS ORDERED, that Plaintiff's Motion for Assignment of Counsel (Docket No. 27) is DENIED.

FURTHER, that to assist Plaintiff in pursuing his case *pro se*, the Clerk of Court is directed to send him a copy of the Court's booklet entitled *Pro Se Litigation Guidelines*.

SO ORDERED.

Dated: July 7, 2016
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Court